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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6438 OF 1998

Smt.Zarin Nozer Desai
Partner of M/s.Laxmi Boilers ... Petitioner

V/s.

Shri M.S. Rawat & Anr. ... Respondents

Mr.R.S. Pai for Petitioner
Mr.C.S. Bhandari for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 28, 2007**

ORAL JUDGMENT:

. The petition has been filed against the award of the IV Labour Court, Mumbai in Reference (IDA) No.144 of 1991. The Labour Court has declared that the Petitioner had illegally terminated the services of the Respondent workman w.e.f. 14.10.1989. It has further held that the workman was not entitled to the relief of reinstatement as he had crossed the age of superannuation i.e., 60 years, during the pendency of the Reference and has therefore granted backwages.

2. The petitioner had employed the workman as a time keeper. A memo was issued to him according to the petitioner on 9.10.1989 for failure to maintain the Provident Fund records and ESI records as required. On 13.10.1989, the workman sought increments from the

partner of the Petitioner as he was in dire financial straits. It is contended by the petitioner that the workman stopped reporting for work from 14.10.1989. On 23.12.1989, the workman approached the petitioner with a letter requesting to be taken in service again and to treat the period between 14.10.1989 till he was reinstated as leave without pay. According to the petitioner, it agreed to reemploy the workman as a new employee and since the workman refused this offer, he did not join duty as a fresh hand. The workman approached the Government Labour Officer and the machinery available to him under the Industrial Disputes Act for redressal of his grievance. His demand was referred for adjudication to the Labour Court.

3. On 13.6.1993, the workman filed his statement of claim contending that his services have been orally terminated by the employer since he sought an increment. It was pleaded in the statement of claim that the company had fraudulently obtained his signature on the letter dated 23.12.1989 which was typed by the Manager of the company. He denied having written a letter of 23.12.1989 of his own volition. The workman has also stated that the last drawn wages are Rs.1690/- per month.

4. In its written statement, the employer i.e., the

petitioner herein, accepted that the last drawn wages were Rs.1690/- per month. The written statement indicates that the employer had found that the workman was irresponsible and careless in executing his duties and was grossly negligent. It is pleaded that the workman did not submit the returns of the Provident Fund and ESI schemes regularly in accordance with the scheduled dates due to which the petitioner had to suffer some monetary loss. It is also pleaded in the written statement that on 2 or 3 occasions prior to 14.10.1989, the workman was issued memos and warned for acts of gross negligence and that the petitioner had condoned his acts only because the workman had some domestic problems due to which he was unable to concentrate on office work. It is then pleaded that on 13.10.1989 the workman approached the management for a wage rise and as his request was refused, he stated that he was unable to continue in service. According to the petitioner, the workman orally resigned from duty on 14.10.1989. It is further pleaded that the oral resignation was accepted by the petitioner, orally, with immediate effect. The petitioner has then pleaded that although the workman had agreed to collect his legal dues after a few days of his resignation he did not report to the company. According to the petitioner, he approached the management on 23.12.1989 contending that he should be taken in service with continuity of service

but without backwages. Paragraphs K, L and M of the written statement indicate that according to the petitioner the workman had voluntarily resigned from service on 14.10.1989 and he did not accept the offer of the management to reemploy him as a fresh hand after he approached them on 23.12.1989.

5. Evidence was led on behalf of both the parties. The Labour Court then decided the Reference on the basis of the evidence before it and came to the conclusion that although the petitioner was liable to reinstate the workman with continuity of service and full backwages the workman was not entitled to be reinstated as he had crossed the age of 60 years which was the age of retirement. The Labour Court had framed the issue as to whether the workman's services were illegally terminated on 14.10.1989. The issue regarding the resignation was also framed by the Labour Court. The Labour Court has held that on 14.10.1989, the services of the workman had ceased on account of termination brought about by the petitioner. The Labour Court has refused to accept the contention of the employer that the workman had voluntarily resigned from the service on 14.10.1989, orally and that the resignation was accepted by the management on the same date, orally. The petitioner has also been directed to pay full backwages to the respondent from 14.10.1989 till he attained the age of

superannuation. The Labour Court has permitted the deductions of Rs.3900/- and Rs.7727/- from the backwages as these amounts were taken as loan by the workmen from the petitioner. The Labour Court has further directed that the services of the workmen be treated as continuous from 14.10.1989 till he was superannuated.

6. Mr.Pai for the petitioner contends that the Labour Court has discarded the evidence of the employer only on the ground that the witnesses of the employer were interested witnesses and their testimony was not supported by documentary evidence. He criticised the award of the Labour Court by contending that the Labour Court could not have discarded the evidence of the employer only on this ground. He then submits that the workman had remained absent from duty from October 1989 to December 1989. In fact, the employer had not terminated the services of the workman and, therefore, the Labour Court was in error in coming to the conclusion that there was a termination of service of the employee on 14.10.1989 when in fact the workman had resigned on that day. He then relies on the judgment in the case of *U.P. State Brassware Corporation Ltd & Anr. v/s. Udai Narain Pandey,* **2006 I LLJ 496** to submit that assuming that it is held that the petitioner had terminated the services of the workman, there is no evidence on record to indicate that during the period

when the workman was unemployed, he was not gainfully employed and, therefore, was not entitled to full backwages.

7. Mr.Bhandari, for the workman on the other hand, has pointed out that the award of the Labour Court is justified and there are no errors of law apparent on the face of the record which require interference from this Court. He submits that the Labour Court has discarded the evidence of the employer, not only for the reason that the witnesses are interested witnesses but also because their evidence did not prove the case of the employer. He submits that the petitioner has changed its stand regarding the cessation of work of the workman time and again. He points out that contradictory pleadings are contained in the written statement. At one stage, it has been pleaded that the workman was guilty of gross negligence in duties and that the employer had decided to condone the negligence because of the hardships being faced by the workman. The petitioner has then pleaded that the workman had orally resigned and his resignation had been accepted by the employer on 14.10.1989 orally. Mr.Bhandari points out that two questions of law have been raised in the petition, one of which reads as follows:

> "1. ... Another important question of law

> arises in this Petition is whether the Labour Court can ignore the long period of absence on the part of the Respondent workman while directing payment of full backwages to him till date of his retirement."

He submits that the employer has also tried to prove a case of abandonment of service before the Labour Court. All these stands of the employer are contradictory to each other and, therefore, according to the learned advocate, the case of the petitioner cannot be accepted. The learned advocate then points out that the workman was in service for over 9.1/2 years and no worker, especially when he was in dire financial straits, would resign from service. He further contends that although the written statement and the evidence of the employer indicates that memos were issued to the workman, not a single memo was placed on record. The learned advocate relies on the judgments in *G.T. Lad & Ors. v/s. Chemicals and Fibres Indian Ltd.,* **1979 LAB. I.C. 290**, *Sonal Garments v/s. Trimbak Shankar Karve*, **2002 III CLR 488;** *Laffans India Pvt. Ltd. v/s. Pancham Singh Rawat & Anr.*, **2002 III CLR 916;** *Prabha Atri v/s. State of U.P. & Ors.,* **2003 I CLR 221** in support of his submissions.

8. On a perusal of the award of the Labour Court, I find that the Labour Court has for cogent reasons decided the Reference by rejecting the case of the

petitioner. The Labour Court while observing that the witnesses of the management were interested witnesses, has discarded their evidence only as regards the number of increments paid to the workman during his 9 years of service. As regards their testimony on other issues, the Labour Court has rightly found that the workman was drawing wages of Rs.1690/- p.m. The employer's pleadings and the testimony of its witnesses indicate that the case of the workman that he was drawing this amount on a monthly basis is correct.

9. As regards the oral resignation, the Labour Court has found, in my view, rightly that the employer has not proved that the resignation was tendered. The Labour Court has considered the evidence of the employer's witnesses, each of whom had stated that the workman had orally resigned from service. The Labour Court has also considered the evidence of the workman where he has denied having tendered his resignation. In fact, the workman has in his crossexamination stated that he could have a talk with the partners of the petitioner during the three months from October 1989 to December 1989 when they told him to resign from duty. The Labour Court has believed the evidence of the workman and that he was orally terminated from service from 14.10.1989 as he was prevented from reporting for duty thereafter. I have perused the evidence of the

witnesses of the management although it is not necessary to do so in the writ jurisdiction of this Court. I find that the award of the Labour Court is based on the evidence before it. The Labour Court has rightly observed that the Manager of the petitioner has deposed that the petitioner had not called upon the workman to collect his legal dues although the workman had resigned in his presence. The Manager has also conceded that no chargesheet was issued to the workman. The Labour Court has accepted the case of the workman that he was reporting for duty from 14.10.1989 to 23.12.1989 every day but was not allowed to resume work. In these circumstances, the Labour Court has preferred the evidence of the workman instead of the management. In my view, there is no perversity in the findings of the Labour Court in not accepting the version of the management. The Labour Court has rightly held that the case of resignation has not been proved by the petitioner.

10. The petitioner has at various times contended (i) that the Respondent workman submitted an oral resignation on 14.10.1989 which was accepted verbally by the petitioner; ii) that the Respondent workman had abandoned his service; iii) that the workman had remained absent from work for a long period of time i.e. from October 1989 to December 1989; iv) that the

workman had left the services because he was issued a memo on 9.10.1989 for negligence in his work and (v) that the workman had submitted a letter dated 23.12.1989 requesting the petitioner to transfer him to another department from the Time Office and to treat his absence from 14.10.1989 as leave without pay. In my view, these wavering stands of the petitioner cannot be accepted. The employer in the petition has also claimed that the workman was absent for a long period of time and therefore backwages should not be paid. This submission is also without any merit. Apart from this, assuming the workman had given a letter dated 23.12.1989 calling upon the employer to assign him work in another department and to treat the absence from 14.10.1989 onwards as leave without pay not a single letter is produced by the petitioner on record to indicate its response to the letter dated 23.12.1989. The Labour Court has accepted the case of the workman that he had not written the letter of 24.12.1989. In such circumstances, in my view, the award of the Labour court need not be interfered with. There is no perversity nor any error of law apparent on the face of record. The Labour Court has chosen to believe the testimony of the workman while discarding the evidence of the employer not just for the reason that they were interested witnesses. The Labour Court has for cogent reasons found that the termination of service is illegal and

that on 14.10.1989, the workman had not resigned from duty.

11. The other issue raised is whether the workman would be entitled to backwages in this case. Admittedly, he has attained the age of superannuation. The case of the employer is that no backwages need be paid since the workman was gainfully employed during the period of unemployment with the Respondent. All these issues have been considered by the Labour Court. The Labour Court has also taken into account that for a short period of three months, the workman had been employed in some other place. The Labour Court having considered the earnings of the workman has directed that it should be deducted from the backwages awarded to him. The Labour Court has also directed that the amount of Rs.6627/- taken as loan from the employer should be deducted. The written statement and the employer's witnesses have indicated that the last drawn wages of the workman were Rs.1690/- per month. It was submitted by Mr.Pai that the increments need not be considered while calculating the backwages. He refers to a judgment of the Supreme Court in the case of *Andhra Pradesh State Road Transport Corporation & anr. v/s. S.Narsagoud*, **2003 I LLJ 816.** In this case, the workman had been found guilty of certain acts of misconduct and he was dismissed from service. The Labour Court

concluded that though the workman was guilty of the charges levelled against him he had been without employment during the pendency of the proceedings and had thereby suffered a penalty on account of nonpayment of wages. The Labour Court therefore in the facts and circumstances of that case directed the employer to reinstate the workman with continuity of service but without backwages. It is in this context the Supreme Court held that an employee who has been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence without there being a specific

direction from the Labour Court, merely on account of him being reinstated with the benefit of continuity of service. Thus, it is not in every case where the Labour Court directs "reinstatement with continuity of service and full backwages" that increments are not to be considered while computing the claim of backwages. In the present case, the workman has not been held guilty of any misconduct whatsoever. The Labour Court has rightly concluded that he was illegally terminated from service and, therefore, he is entitled to be reinstated with continuity of service and full backwages. This would necessarily mean that he would be entitiled to all

benefits, including increments, on his reinstatement. The judgment cited by Mr.pai has no application to the facts before me. In any event, the backwages awarded by the Labour Court are only for the period from 1989 till the employee attained the age of superannuation.

12. In my view, there is no error committed by the Labour Court requiring interference by this Court in jurisdiction under Article 227 of the Constitution of India.

13. Petition dismissed. Rule discharged with costs.